

BOARD BILL #93 INTRODUCED BY ALDERMAN KENNETH ORTMANN

An Ordinance Approving The Petition Of Various Owners Of Certain Real Property To Establish A Community Improvement District, Establishing The 1831/2000 Sidney Street Community Improvement District, Finding A Public Purpose For The Establishment Of The 1831/2000 Sidney Street Community Improvement District, Authorizing the Execution of a Transportation Project Agreement Between The City And The 1831/2000 Sidney Street Transportation Development District, Prescribing The Form And Details Of Said Agreement, Making Certain Findings With Respect Thereto, Authorizing Other Related Actions In Connection With The TDD Project, And Containing An Emergency Clause And A Severability Clause.

WHEREAS, Mo. Rev. Stat. §67.1400 *et seq.* (the “CID Act”) authorized the Board of Aldermen to approve the petitions of property owners to establish a Community Improvement District; and

WHEREAS, a petition has been filed with the City, requesting formation and establishment of The 1831/2000 Sidney Street Community Improvement District, signed by owners or authorized representatives of the owners of more than fifty percent by assessed value and per capita of the property located within the proposed boundaries of The 1831/2000 Sidney Street Community Improvement District (as amended, the “Petition”); and

WHEREAS, the Register of the City of St. Louis did review and determine that the Petition substantially complies with the requirements of the CID Act; and

WHEREAS, a public hearing, duly noticed and conducted as required by and in accordance with the CID Act was held at 9:00 a.m. on July 2, 2014, by the Board of Aldermen; and

June 27, 2014

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BB #93 Sponsor: Alderman Ortmann

1 **WHEREAS**, the 1831/2000 Sidney Street Transportation Development District (the
2 “TDD”) intends to undertake that certain “TDD Project” as described and defined in that certain
3 Transportation Project Agreement (the “Transportation Project Agreement”), the form of which
4 is attached hereto as **Appendix B**; and

5 **WHEREAS**, the City constitutes the “local transportation authority” for the purposes of
6 the TDD Project, and as no portion of the proposed project has been or is intended to be merged
7 into the State highways and transportation system under the jurisdiction of the Missouri Highway
8 Transportation Commission, approval of the TDD Project is vested exclusively with the City;
9 and

10 **WHEREAS**, the TDD Act provides that prior to construction or funding of a proposed
11 project, such project shall be submitted to the local transportation authority for its prior approval,
12 subject to any required revisions of such project, and the district and local transportation
13 authority in question entering into a mutually satisfactory agreement regarding the development
14 and future maintenance of the TDD Project; and

15 **WHEREAS**, the City hereby desires and intends to approve the TDD Project, subject to
16 the TDD and the City entering into a mutually satisfactory agreement regarding the development
17 and future maintenance of the TDD Project; and

18 **WHEREAS**, the City intends to enter into the Transportation Project Agreement as a
19 mutually satisfactory agreement regarding the development and future maintenance of the TDD
20 Project; and

21 **WHEREAS**, the TDD Act provides that, within six months after development and initial
22 maintenance costs of a project have been paid, the district shall transfer control and ownership of
23 the project in question to the local transportation authority pursuant to contract; and

1 **WHEREAS**, the TDD Act intends to transfer and the City intends to accept such control
2 and ownership pursuant to and on the terms set forth in the Transportation Project Agreement;
3 and

4 **WHEREAS**, the Board of Aldermen hereby determines that the terms of the
5 Transportation Project Agreement are acceptable, and that the execution, delivery and
6 performance by the City and the TDD of their respective obligations are in the best interests of
7 the City and the health, safety, morals and welfare of its residents; and

8 **WHEREAS**, this Board of Aldermen hereby finds that the adoption of this ordinance is
9 in the best interest of the City of St. Louis and that the owners of real property located within
10 The 1831/2000 Sidney Street Community Improvement District, as well as the City as a whole,
11 will benefit from the establishment of The 1831/2000 Sidney Street Community Improvement
12 District and the other transactions described herein.

13 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

14 **SECTION ONE.**

15 (a) A community improvement district, to be known as “The 1831/2000 Sidney
16 Street Community Improvement District” (hereinafter referred to as the “District”), is hereby
17 established pursuant to the CID Act on certain real property described below to contract with a
18 private property owner to demolish, remove, renovate, reconstruct, rehabilitate, repair and/or
19 equip a portion of an existing building within the CID and to provide services, construct
20 improvements, impose taxes, and carry out other functions as set forth in the Petition, which is
21 attached hereto as Appendix A and incorporated herein by this reference.

22 (b) The District boundaries are set forth in the Petition and are generally
23 described as follows: 2000 Sidney Street on its most Western boundary; Victor Street on its most

1 Northern boundary; Interstate 55 on its most Eastern boundary; and Senate Street on its most
2 Southern boundary, provided that said boundaries are irregular and do not encompass all parcels
3 located therein.

4 **SECTION TWO.** The District is authorized by the Petition, in accordance with the CID
5 Act, to impose a tax upon retail sales within the District to provide funds to accomplish any
6 power, duty or purpose of the District.

7 **SECTION THREE.** The District is authorized by the CID Act, at any time, to issue
8 obligations, or to enter into agreements with other entities with the authority to issue obligations,
9 for the purpose of carrying out any of its powers, duties, or purposes. Such obligations shall be
10 payable out of all, part or any combination of the revenues of the District and may be further
11 secured by all or any part of any property or any interest in any property by mortgage or any
12 other security interest granted. Such obligations shall be authorized by resolution of the District,
13 and if issued by the District, shall bear such date or dates, and shall mature at such time or times,
14 but not more than twenty (20) years from the date of issuance, as the resolution shall specify.
15 Such obligations shall be in such denomination, bear interest at such rate or rates, be in such
16 form, be payable in such place or places, be subject to redemption as such resolution may
17 provide and be sold at either public or private sale at such prices as the District shall determine
18 subject to the provisions of Mo. Rev. Stat. §108.170. The District is also authorized to issue
19 such obligations to refund, in whole or part, obligations previously issued by the District.

20 **SECTION FOUR.**

21 (a) Pursuant to the Petition, the District shall be in the form of a political
22 subdivision of the State of Missouri, known as “The 1831/2000 Sidney Street Community
23 Improvement District.”

1 (b) Pursuant to Section 67.1471 of the CID Act, the fiscal year for the District
2 shall be the same as the fiscal year for the City of St. Louis.

3 (c) No earlier than one hundred and eighty (180) days and no later than ninety
4 (90) days prior to the first day of each fiscal year, the District shall submit to the Board of
5 Aldermen a proposed annual budget for the District, setting forth expected expenditures,
6 revenues, and rates of assessments, if any, for such fiscal year. The Board of Aldermen may
7 review and comment on this proposed budget, but if such comments are given, the Board of
8 Aldermen shall provide such written comments no later than sixty (60) days prior to the first day
9 of the relevant fiscal year; such comments shall not constitute requirements, but shall only be
10 recommendations.

11 (d) The District shall hold an annual meeting and adopt an annual budget no later
12 than thirty (30) days prior to the first day of each fiscal year.

13 **SECTION FIVE.** The District is authorized to use the funds of the District for any of
14 the improvements, services or other activities authorized in the Petition and under the CID Act,
15 which funds will be used within the boundaries of the District as required by the CID Act.

16 **SECTION SIX.** Pursuant to the CID Act, the District shall have all of the powers
17 necessary to carry out and effectuate the purposes of the District and the CID Act as set forth in
18 the Petition and under the CID Act.

19 **SECTION SEVEN.** The City of St. Louis hereby finds that the uses of the District
20 proceeds as provided for in the Petition hereto, which proceeds will be used within the
21 boundaries of the District as required by the CID Act, will serve a public purpose by remediating
22 blight and encouraging the redevelopment of real property within the District.

1 **SECTION EIGHT.** A portion of the property within the CID is a “blighted area”
2 pursuant to Section 67.1401.2(3) of the CID Act because such property was determined to be a
3 blighted area under Sections 99.300 to 99.715, RSMo, pursuant to Ordinance No. 65466.

4 **SECTION NINE.** Within one hundred twenty (120) days after the end of each fiscal
5 year, the District shall submit a report to the Register of the City and the Missouri Department of
6 Economic Development stating the services provided, revenues collected and expenditures made
7 by the District during such fiscal year, and copies of written resolutions approved by the board of
8 directors of the District during the fiscal year. The Register shall retain this report as part of the
9 official records of the City and shall also cause this report to be spread upon the records of the
10 Board of Aldermen, pursuant to Section 67.1471 of the CID Act.

11 **SECTION TEN.** The term for the existence of the District shall be as set forth in the
12 Petition, as may be amended from time to time or as such term may be otherwise modified in
13 accordance with the CID Act.

14 **SECTION ELEVEN.** Pursuant to the CID Act, the Board of Aldermen shall not
15 decrease the level of publicly funded services in the District existing prior to the creation of the
16 District or transfer the burden of providing the services to the District unless the services at the
17 same time are decreased throughout the City, nor shall the Board of Aldermen discriminate in the
18 provision of the publicly funded services between areas included in the District and areas not so
19 included.

20 **SECTION TWELVE.** The Register shall report in writing the creation of the District to
21 the Missouri Department of Economic Development.

22 **SECTION THIRTEEN.** The Petition provides that the District shall be governed by a
23 Board of Directors consisting of five individual directors (collectively the “Directors” and each a

“Director”), such Directors to be appointed by the Mayor of the City with the consent of the Board of Aldermen, in accordance with the CID Act and the qualifications set forth in the Petition. By his approval of this ordinance, the Mayor does hereby appoint the following named individuals as Directors of the District for the terms set forth below, and by adoption of this ordinance, the Board of Aldermen hereby consents to such appointments:

<u>Name</u>	<u>Term</u>
Kevin Nashan	4 years
Mina Nashan	4 years
Christopher Nashan	2 years
Shawn Kelly	2 years
Nichole Kelly	2 years

SECTION FOURTEEN. The Board of Alderman hereby approves the TDD Project as submitted to the City.

SECTION FIFTEEN. The Board of Alderman further finds and determines that it is necessary and desirable to enter into the Transportation Project Agreement with the TDD in order to implement the TDD Project.

SECTION SIXTEEN. The Board of Alderman hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Transportation Project Agreement by and between the City and the TDD in similar form to that attached hereto as **Appendix B** and incorporated herein by this reference, and the City Register is hereby authorized and directed to attest to the Transportation Project Agreement and to affix the seal of the City thereto. The Transportation Project Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller

1 executing the same and as may be consistent with the intent of this Ordinance and necessary and
2 appropriate in order to carry out the matters herein authorized.

3 **SECTION SEVENTEEN.** The Mayor and Comptroller of the City or his or her
4 designated representatives are hereby authorized and directed to take any and all actions to
5 execute and deliver for and on behalf of the City any and all additional certificates, documents,
6 agreements or other instruments as may be necessary and appropriate in order to carry out the
7 matters herein authorized, with no such further action of the Board of Alderman necessary to
8 authorize such action by the Mayor or Comptroller or his or her designated representatives.

9 **SECTION EIGHTEEN.** The Mayor and Comptroller and his or her designated
10 representatives, with the advice and concurrence of the City Counselor, are hereby further
11 authorized and directed to make any changes to the documents, agreements and instruments
12 approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance
13 and necessary and appropriate in order to carry out the matters herein authorized, with no such
14 further action of the Board of Alderman necessary to authorize such changes by the Mayor or
15 Comptroller or his or her designated representatives.

16 **SECTION NINETEEN.** If any section, subsection, sentence, clause, phrase or portion of
17 this ordinance is held to be invalid or unconstitutional, or unlawful for any reason, by any court
18 of competent jurisdiction, such portion shall be deemed and is hereby declared to be a separate,
19 distinct and independent provision of this ordinance, and such holding or holdings shall not
20 affect the validity of the remaining portions of this ordinance.

21 **SECTION TWENTY.** The Board of Aldermen hereby finds and determines that this
22 ordinance constitutes an “emergency measure” pursuant to Article IV, Section 20 of the City
23 Charter, because this Ordinance establishes the District, which is a taxing district, and as such,

- 1 this Ordinance shall take effect immediately upon its approval by the Mayor as provided in
- 2 Article IV, Section 20 of the City Charter.

APPENDIX A

Petition to Establish The 1831/2000 Sidney Street Community Improvement District

APPENDIX B

Form of Transportation Project Agreement

SEE ATTACHED

1831/2000 SIDNEY STREET TRANSPORTATION DEVELOPMENT DISTRICT

TRANSPORTATION PROJECT AGREEMENT

THIS TRANSPORTATION PROJECT AGREEMENT (this “Agreement”) is made and entered into as of the ____ day of _____, 2014, by and between the 1831/2000 SIDNEY STREET TRANSPORTATION DEVELOPMENT DISTRICT, a political subdivision duly organized and existing under the laws of the State of Missouri (the “TDD”), and the CITY OF ST. LOUIS, MISSOURI, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri (the “City”).

Recitals:

A. The TDD is a political subdivision and transportation development district formed pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the “TDD Act”).

B. Peacemaker, LLC, a Missouri limited liability company, or an affiliate (the “Company”), has an interest in certain parking facilities located in the City.

C. The TDD shall acquire from the Company an interest in all or a portion of the parking facilities, which will be acquired for a TDD Project (as hereinafter defined).

D. The City and the TDD desire to enter into this Agreement in order to: (i) memorialize the agreement of the City, acting in its capacity as local transportation authority (as defined in the TDD Act) regarding development and future maintenance of the TDD Project; and (ii) serve as the contract pursuant to which the TDD shall transfer control and ownership of the TDD Project to the City after the costs thereof have been paid in accordance with Section 238.275.1 of the TDD Act. The City acknowledges that it is entering into this Agreement for the overall benefit of the community and that the commitment to provide public access to the TDD Project does not constitute a specific economic benefit to the City or the TDD.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the TDD and the City hereby agree as follows:

Section 1. Definitions. In addition to the capitalized terms defined elsewhere in this Agreement and in the Recitals, the following capitalized terms used in this Agreement shall have the meanings ascribed to them in this Section.

Obligations. Obligations issued by the TDD or any other political subdivision to finance the TDD Project.

TDD Project. The Transportation Project described in the Petition for the Creation of a Transportation Development District, filed in the Circuit Court of the City of St. Louis.

TDD Transfer Document. That certain lease or license agreement entered into between the Company and the TDD for parking, as may be amended from time to time by the parties thereto.

Term. The period commencing on the date of execution of the TDD Transfer Document and, unless otherwise terminated hereunder prior thereto, continuing until the end of the calendar month that includes that date that is the later of: (i) the end of the TDD Project's reasonably expected useful life, as determined by an engineer qualified to provide engineering services in the State of Missouri; or (ii) the satisfaction in full of all Obligations.

Section 2. Access to TDD Project. The TDD shall, and shall cause its agents and contractors to, comply with any and all applicable laws in connection with its operation of the TDD Project. Prior to the Transfer (as hereinafter defined), the TDD shall retain all operational control of the TDD Project. After the Transfer, the City shall have all operational control of the TDD Project for the remaining Term, subject to any existing encumbrances.

Section 3. Transfer of Ownership and Control. The City and the TDD agree to execute an Assignment in form mutually agreeable to the parties immediately upon maturity or termination of the Obligations, by which the TDD transfers to the City its interest in the TDD Project for the remaining Term (the "Transfer"). The TDD and the City acknowledge that, upon execution, the transactions contemplated by the Assignment shall constitute the transfer of control and ownership of the Project as required pursuant to Section 238.275 of the TDD Act, provided that the TDD shall remain responsible for operation and maintenance of the Project even after such transfer, in accordance with Section 4 hereinafter.

Section 4. TDD Project Operation and Maintenance. Except as otherwise provided in the TDD Transfer Document, while the Obligations remain outstanding, the TDD shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying or using the TDD Project or any part thereof, including without limitation the payment of all expenses required for the operation of the TDD Project, including, without limitation, payment of any real or personal property taxes, assessments, payments in lieu of taxes assessed, any expenses incurred, performance of any cleaning or maintenance services required to maintain the TDD Project in good condition, and provision of any repairs for any damage to the TDD Project (the "TDD Maintenance"). The TDD agrees to operate and maintain the TDD Project in accordance with all applicable laws and regulations. Following the satisfaction in full of all Obligations, and during the remaining Term, the City shall be responsible for the TDD Maintenance.

Section 5. Indemnification and Release. To the extent permitted by law, the TDD agrees to indemnify, defend, and hold the City, its employees, agents, and independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the acquisition of the TDD Project, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the TDD or its respective employees, agents or independent

contractors in connection with the management, and acquisition of the TDD Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and its employees, agents, and independent contractors harmless from and against any and all suits, claims, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the negligence or willful misconduct of the City, its employees, agents, and independent contractors and consultants, or arising from a default by the City of its obligations hereunder. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

Section 6. Miscellaneous.

6.1 Representations and Warranties of the TDD. The TDD hereby represents and warrants to the City that: (i) the TDD is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the TDD pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the TDD; and (iii) this Agreement is binding upon, and enforceable against the TDD, in accordance with its terms.

6.2 Representations and Warranties of the City. The City hereby represents and warrants to the TDD that: (i) the City is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the City pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the City; and (iii) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

6.3 Termination. In the event that the Ordinance authorizing the execution of this Agreement shall become ineffective, then this Agreement shall terminate.

6.4 Applicable Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Missouri.

6.5 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City or the TDD shall be personally liable to the Company in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement. No member, partner, agent, employee or representative of the Company shall be personally liable to the City or the TDD in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

6.6 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the TDD and the City with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. It supercedes all prior written or oral understandings with respect thereto. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the TDD and the City.

6.7 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

6.7 Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or any of them, would not have entered this Agreement without such term or provision, or would not have intended the remainder of this Agreement to be enforced without such term or provision.

6.8 Notices. Any notice, demand, or other communication required by this Agreement to be given by any party hereto to the others shall be in writing and shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, or delivered personally as follows:

In the case of the TDD: 1831/2000 Sidney Street Transportation
Development District
2000 Sidney Street
St. Louis, Missouri 63104
Attention: Kevin Nashan

With a copy to: Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attention: David Richardson

In the case of the City, to: City of St. Louis
City Hall
1200 Market Street
St. Louis, Missouri 63103
Attention: Mayor, Room 200
Attention: Comptroller, Room 212

With copies to: St. Louis Development Corporation
1520 Market Street, Suite 2000
St. Louis, Missouri 63103
Attention: Executive Director

City Counselor
City of St. Louis
1200 Market Street, Room 314
St. Louis, Missouri 63103

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the parties have caused this 1831/2000 Sidney Street Transportation Development District Transportation Project Agreement to be executed as of the date first written above.

**1831/2000 SIDNEY STREET
TRANSPORTATION DEVELOPMENT
DISTRICT**

By: _____
_____, Chairman

ATTEST:

By: _____
_____, Secretary

IN WITNESS WHEREOF, the parties have caused this 1831/2000 Sidney Street Transportation Development District Transportation Project Agreement to be executed as of the date first written above.

CITY OF ST. LOUIS, MISSOURI

By: Mayor

By: Comptroller

Attest:

Register

Approved as to form:

City Counselor